

REMARKS

Claims 1-27 are all the claims pending in the application.

I. Summary of the Office Action

Claims 1, 2, 4, 6-9, 16, 23, 24, and 27 are rejected under 35 U.S.C. § 102(b) and claims 3 and 5 are rejected under 35 U.S.C. § 103(a). Claims 10-15 and 17-21 are allowed and claims 22, 25, and 26 contain allowable subject matter.

II. Prior Art Rejections

Claims 1, 2, 4, 6-9, 16, 23, 24, and 27 are rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 5,367,523 to Chang et al. (hereinafter “Chang”). Applicant respectfully traverses these grounds for a rejection in view of the following comments.

Independent claim 1, among a number of unique features, recites: “wherein only said data sink reports to said data source on said network status information of said communications network in a neighbourhood around the data sink, wherein no intermediate network node reports to said data source on said network status information of said communications network, and wherein said communications network is a heterogeneous network comprising at least two different networks.”

In response to Applicant’s arguments the Examiner contends that since the data is translated into packets, Chang discloses two heterogeneous networks (*see* page 6 of the Office Action). Applicant respectfully disagrees. Chang discloses that the user 15 of the packet network 10 utilizes an end node device 12, which is the source of digital data that is transmitted to a local network node 11, which translates and transports user data in the packet network 10.

However, just because Chang discloses a local network node 11 translating user's data into packet format, it does not inherently suggest that there are two heterogeneous networks.

Under the doctrine of "inherency," if an element is not expressly disclosed in a prior art reference, the reference will still be deemed to anticipate a subsequent claim if the missing element "is necessarily present in the thing described in the reference" *Cont'l Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991). "Inherent anticipation requires that the missing descriptive material is '**necessarily present,**' **not merely probably or possibly present,** in the prior art." (emphasis added) *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 U.S.P.Q.2d 1597, 1599 (Fed. Cir. 2002); see also MPEP §2112.

In the present case, however, the end node 12 maybe a user computer, which generates digital data and transmits it to a local network node 11 (a router) that will encrypt the data into an appropriate envelope (packet) for transmission. For example, Chang recites: "[u]sers 15 of the packet communications network 10 of FIG. 1 utilize an end node device 12 connected to the local network node 11 for access to the packet network 10" (col. 6, lines 13 to 16). In other words, Chang suggests that the end node device 12 is a computer that generates digital data. In short, a separate communication network between the end node 12 and the local network node 11 is not necessarily present. That is, the end node 12 and the local network node 11 may be a personal computer and a modem, respectively. As such, Chang does not disclose or suggest a heterogeneous network having two or more different networks.

Therefore, for at least these exemplary reasons, Applicant respectfully submits that claim 1 is patentably distinguishable from Chang. Applicant respectfully requests the Examiner to withdraw this rejection of claim 1. Claims 23 and 24 are patentable at least by virtue of its dependency on claim 1.

In addition, dependent claim 23 recites “wherein one of the at least two different networks form the neighborhood around the data sink and wherein the neighborhood around the data sink is a different type of network from a network formed by the intermediate node.” Chang does not disclose or even remotely suggest that neighborhood around the end node 12 (alleged data sink) forms one of the networks that is different from the other network formed by network nodes 11 (alleged intermediate nodes). For at least these additional exemplary reasons, claim 23 is patentably distinguishable from Chang.

In addition, dependent claim 24 recites: “wherein the data sink is connected to a network termination element via a first communication network and wherein said network termination element is connected to the data source via the at least one intermediate network node of a second communication network.” With respect to claim 1, the Examiner contends that the end node 12 is allegedly the data sink, then with respect to claim 24, Chang fails to disclose or even remotely suggest the end node 12 being connected to a termination element via a first communication network. For at least these additional exemplary reasons, claim 24 is patentably distinguishable from Chang.

Independent claim 2 contains features that are similar to the features argued above with respect to claim 1, and those arguments are respectfully submitted to apply with equal force here.

For at least analogous exemplary reasons, therefore, Applicant respectfully requests the Examiner to withdraw this rejection of the independent claim 2 and its dependent claims 4, 6-9, 16, and 27.

Claims 3 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chang in view of US Patent No. 6,963,538 to Giroux et al. (hereinafter “Giroux”). Applicant respectfully traverses these grounds of rejection in view of the following comments.

Claims 3 and 5 depend on claim 2. As explained above, Chang does not disclose or suggest all of the unique features of the independent claim 2. Giroux does not cure the deficient disclosure of Chang. Giroux discloses using RM-cells associated with an ABR technique of the ATM network. Giroux does not disclose or suggest a heterogeneous network having two different networks such as having one network being a frame relay. In short, Giroux does not cure the deficient disclosure of Chang. Accordingly, claim 2 is patentable over the prior art of record. Claims 3 and 5 are patentable at least by virtue of their dependency on claim 2.

III. Allowable Subject Matter

Claims 10-15 and 17-21 are allowed and claims 22, 25, and 26 contain allowable subject matter. Applicant respectfully holds the rewriting of these claims in abeyance until arguments presented with respect to claims 1 and 2 have been reconsidered.

IV. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

RESPONSE UNDER 37 C.F.R. § 1.116
U.S. Patent Application No.: 09/737,471
Attorney Docket No.: Q62150

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dvorson", is written over a horizontal line.

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